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IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

FREIGHTLINER CORPORATION,
Petitioner,
v.
BEN MYRICK AND EMILY MYRICK,
Respondents.

NAVISTAR INTERNATIONAL TRANSPORTATION CORP.,
Petitioner,
v.
JACK LINDSEY, Executor of the Estate and Surviving Spouse of Grace C. Lindsey,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

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BRIEF OF *AMICUS CURIAE* PRODUCT LIABILITY ADVISORY COUNCIL, INC. IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

	Page
INTEREST OF THE AMICUS CURIAE	1
STATEMENT OF STATUTORY AND REGULATORY FACTS	1
SUMMARY OF THE ARGUMENT	6
ARGUMENT	7
THE SAFETY ACT PREEMPTS STATE COMMON LAW STANDARDS THAT CONFLICT WITH AN ON-POINT FEDERAL MOTOR VEHICLE SAFETY STANDARD	7
I. THE SAFETY ACT EXPRESSLY PREEMPTS STATE COMMON LAW STANDARDS THAT CONFLICT WITH AN ON-POINT FEDERAL MOTOR VEHICLE SAFETY STANDARD	9
II. SECTION 108(c) OF THE SAFETY ACT DOES NOT PRESERVE STATE COMMON LAW SAFETY STANDARDS THAT CONFLICT WITH AN ESTABLISHED FEDERAL MOTOR VEHICLE SAFETY STANDARD	15
A. The Language and Structure of the Safety Act Demonstrate That Section 108(c) Is Not, and Was Not Intended to Be, a Preemption Provision	16
B. The Legislative History of the Safety Act Demonstrates That Section 108(c) Is Not, and Was Not Intended to Be, a Preemption Provision	21
C. Even if Viewed as a Saving Clause, Section 108(c) Precludes Only Field Preemption, and Does Not Preclude Preemption Where There Is a Conflict Between On-Point Federal Law and the Asserted State Law	23

TABLE OF CONTENTS—Continued

Page

III. THE COURT OF APPEALS FURTHER ERRED IN HOLDING THAT IMPLIED PREEMPTION ANALYSIS WAS AUTOMATICALLY PRECLUDED BECAUSE THE SAFETY ACT CONTAINS AN EXPRESS PREEMPTION PROVISION 26

CONCLUSION 30

TABLE OF AUTHORITIES

CASES

Page

Allied-Signal, Inc. v. Director, Div. of Taxation, —— U.S. ——, 112 S. Ct. 2251 (1992) 28
Asahi Metal Indus. Co. v. Superior Court, 480 U.S. 102 (1987) 12
California Fed. Sav. & Loan Ass'n v. Guerra, 479 U.S. 272 (1987) 18, 27
California v. F.E.R.C., 495 U.S. 490 (1990) 19
Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981) 8, 19, 24, 30
Cipollone v. Liggett Group, Inc., —— U.S. ——, 112 S. Ct. 2608 (1992) ..... *passim*
CSX Transp., Inc. v. Easterwood, —— U.S. ——, 113 S. Ct. 1732 (1993) 7, 13, 16, 19, 20, 27, 28
Erie R. v. Tompkins, 304 U.S. 64 (1938) 12
Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141 (1982) 7, 8
Gade v. National Solid Wastes Management Ass'n, —— U.S. ——, 112 S. Ct. 2374 (1992) 18, 20
Head v. New Mexico Bd. of Examiners in Optometry, 374 U.S. 424 (1963) 19
Hewitt-Robins, Inc. v. Eastern Freight-Ways, Inc., 371 U.S. 84 (1962) 19
Ingersoll-Rand Co. v. McClendon, 498 U.S. 133 (1990) 28
I.N.S. v. National Ctr. for Immigrants' Rights, Inc., —— U.S. ——, 112 S. Ct. 551 (1991) 16
International Paper Co. v. Ouellette, 479 U.S. 481 (1987) 8, 9, 12, 19, 23, 24, 25, 30
John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank, —— U.S. ——, 114 S. Ct. 517 (1993) 18
Jones v. Rath Packing Co., 430 U.S. 519 (1977) 19, 28
Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625 (1959) 12
Lawrence County v. Lead-Deadwood Sch. Dist., 469 U.S. 256 (1985) 8
Lee v. Weisman, —— U.S. ——, 112 S. Ct. 2649 (1992) 28

TABLE OF AUTHORITIES—Continued

	Page
Louisiana Pub. Serv. Comm'n v. F.C.C., 476 U.S. 355 (1986)	7
Malone v. White Motor Corp., 435 U.S. 497 (1978)	18, 27
Mansell v. Mansell, 490 U.S. 581 (1989)	19
Metropolitan Life Ins. Co. v. Massachusetts, 471 U.S. 724 (1985)	19
Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n, 453 U.S. 1 (1981)	19
Miles v. Apex Marine Corp., 498 U.S. 19 (1990)	23
Morales v. Trans World Airlines, Inc., —— U.S. ——, 112 S. Ct. 2031 (1992)	18
Myrick v. Freuhauf Corp., 13 F.3d 1516 (11th Cir. 1994)	10, 15, 16, 26, 27
Myrick v. Fruehauf Corp., 795 F. Supp. 1139 (N.D. Ga. 1992)	25
Northwest Airlines, Inc. v. County of Kent, Mich., —— U.S. ——, 114 S. Ct. 855 (1994)	19
Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986)	18, 19
Paccar, Inc. v. National Highway Traffic Safety Admin., 573 F.2d 632 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978)	9, 25, 26
Pennsylvania R.R. v. Puritan Coal Mining Co., 237 U.S. 121 (1915)	24
Ray v. Atlantic Richfield Co., 435 U.S. 151 (1978)	14
San Diego Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959)	8, 11
Shaw v. Delta Air Lines, Inc., 463 U.S. 85 (1983)	8, 20
Silkwood v. Kerr-McGee Corp., 464 U.S. 238 (1984)	8, 12
Taylor v. General Motors Corp., 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990)	10, 15
Texas & Pac. Ry. v. Abilene Cotton Oil Co., 204 U.S. 426 (1907)	23, 24
T.I.M.E., Inc. v. United States, 359 U.S. 464 (1959)	24

TABLE OF AUTHORITIES—Continued

	Page
United States v. Rutherford, 442 U.S. 544 (1979)	14
Wood v. General Motors Corp., 865 F.2d 395 (1st Cir. 1988), *cert. denied*, 494 U.S. 1065 (1990)	17
STATUTES AND RULES	
U.S. Const. art. VI, cl. 2	7
10 U.S.C. § 1408	19
15 U.S.C. § 1334	10
15 U.S.C. § 1391	13
15 U.S.C. § 1392	1
15 U.S.C. § 1397	15
15 U.S.C. § 1460	19
15 U.S.C. § 4406	18
16 U.S.C. § 821	19
29 U.S.C. § 301	18
29 U.S.C. § 523	19
29 U.S.C. § 653	18
29 U.S.C. § 667	18
29 U.S.C. § 1144	18
33 U.S.C. § 1365	19
33 U.S.C. § 1370	19
33 U.S.C. § 1415	19
42 U.S.C. § 2000e-7	18
42 U.S.C. § 2000h-4	18
45 U.S.C. § 434	20
46 U.S.C. § 767	18
47 U.S.C. § 414	19
49 U.S.C. § 22	19
49 U.S.C. § 316	19
49 U.S.C. § 1506	18
49 U.S.C. § 1513	19
49 U.S.C. § 30101-69	1
49 U.S.C. § 30103	1, 2, 5, 21
49 U.S.C. § 30111	1
41 Fed. Reg. 2392 (Jan. 16, 1976)	13
58 Fed. Reg. 4655 (Sept. 2, 1993)	29, 30
89 Pub. L. 563, 80 Stat. 718	1

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES	Page
112 Cong. Rec. 14,254 (1966)	4
112 Cong. Rec. 14,257 (1966)	2
112 Cong. Rec. 21,487 (1966)	6, 22
112 Cong. Rec. 21,490 (1966)	6
H.R. Rep. No. 1919, 89th Cong., 2d Sess. 16 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2731	2, 6, 21
H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966)	2, 3, 6, 21
Motor Carriers, Rates, Fares and Charges Act, repealed Pub. L. 95-473 (1978)	19
Motor Carriers, Rates, Fares and Charges Act, repealed Pub. L. 97-449, 96 Stat. 2444 (1983)	19
National Highway Traffic Safety Administration Motor Vehicle Programs, *Program Plan for Motor Vehicle Safety Standards* at 3 (October 1971)	13
S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709	3, 22
Traffic Safety: Hearings on H.R. 13228 Before the House Comm. on Interstate and Foreign Commerce, 89th Cong., 2d Sess., pt. 1, at 146 (1966)	4, 5
Traffic Safety: Hearing on S. 3005 Before the Senate Comm. on Commerce, 89th Cong., 2d Sess. 65-66 (1966)	5

INTEREST OF THE AMICUS CURIAE

Amicus Curiae Product Liability Advisory Council, Inc. (the "Advisory Council") is an association of industrial companies that was formed for the principal purpose of submitting *amicus curiae* briefs in appellate cases involving significant issues affecting the law of product liability.* Its members include many manufacturers—among them the Petitioners in this case—whose products are regulated by the National Traffic and Motor Vehicle Safety Act and by the safety standards promulgated under that Act. Its members also include manufacturers who are subject to other federal statutes that contain preemption provisions or saving clauses.[1] Accordingly, the Advisory Council has a strong interest in assisting the Court in interpreting the preemption provision of the Safety Act and clarifying the proper relationship between implied and express preemption.

STATEMENT OF STATUTORY AND REGULATORY FACTS

On September 9, 1966, Congress enacted Public Law 89-563, 80 Stat. 718, entitled "An Act to provide for a coordinated national safety program and establishment of safety standards for motor vehicles in interstate commerce to reduce accidents involving motor vehicles and to reduce the deaths and injuries occurring in such accidents" (the "Safety Act"). That purpose was to be accomplished through federal motor vehicle safety standards that would "meet the need for motor vehicle safety . . . ." 15 U.S.C. § 1392(a) (now codified at 49 U.S.C. § 30111(a)).[2]

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* Consent letters have been filed with the Clerk of this Court.

[1] A list of the members of *Amicus Curiae* Product Liability Advisory Council, Inc. is attached as Appendix A.

[2] This brief refers to the sections of the Safety Act as they were originally codified. The Safety Act was recently recodified at 49 U.S.C. sections 30101-69. The changes to those portions of the Act that are at issue in this case, however, were made for purposes of consistency, to eliminate surplusage, and to add clarity, and were not intended to be substantive. *See, e.g.*, Historical and Statutory Notes to 49 U.S.C. § 30103.

To ensure that the "coordinated national safety program" would not be undermined by inconsistent state standards, and that safety standards would be uniform nationwide, Congress included a preemption provision that prohibited states from establishing or maintaining state standards inconsistent with federal safety standards, except for vehicles equipped for a state's own use. That preemption provision, section 103(d) of the Safety Act (now 49 U.S.C. § 30103(b), as amended), stated:

> **Supremacy of federal standards; allowable higher standards for vehicles used by federal or state governments**
>
> Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority either to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment, any safety standard applicable to the same aspect of performance of such vehicle or item of equipment, which is not identical to the Federal standard. Nothing in this section shall be construed to prevent the Federal Government or the government of any state or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use if such requirement imposes a higher standard of performance than that required to comply with the otherwise applicable Federal standard.

Section 103(d) is the Safety Act's preemption provision. It is entitled "Supremacy of federal standards," and the virtually identical preemption provision in the bill that was reported from committee in the Senate was entitled "Preemption." 112 Cong. Rec. 14,257 (1966). The sections of the conference and House reports discussing section 103(d) are entitled "Preemption." H.R. Rep. No. 1919, 89th Cong., 2d Sess. 16 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2731, 2732-33; H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966). The discussion of section 103(d) in the Senate report specifically states that inconsistent state standards "are preempted . . . ." S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720. No other provision in the Safety Act refers to preemption or federal supremacy; no version of either the House bill or the Senate bill referred to any other provision as a preemption provision or as a federal supremacy provision; no Senate report, House report, or conference report referred to any other provision as a preemption provision or as a federal supremacy provision; and no one in the floor debates discussed preemption or federal supremacy in connection with any other provision.

Congress made it equally clear that section 103(d) was intended to ensure the uniformity of federally authorized motor vehicle safety standards by precluding states from establishing, or continuing in effect, inconsistent standards. The House report, for example, described the intent and purpose of the Safety Act's preemption provision as follows:

> *Preemption.*—. . . . [T]his preemption subsection [103(d)] is intended to result in uniformity of standards so that the public as well as industry will be guided by one set of criteria rather than by a multiplicity of diverse standards.

H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966).

Similarly, in explaining the need for the preemption provision, the Senate Report emphasized:

> The centralized, mass production, high volume character of the motor vehicle manufacturing industry in the United States requires that motor vehicle safety standards be not only strong and adequately enforced, but that they be uniform throughout the country.

S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720.

In hearings on the Safety Act, legislators and witnesses repeatedly stressed that uniform national standards were essential for three reasons. First, the national scope of the problem of vehicle safety required a national response. For example, when Secretary of Commerce Connor was asked about the scope of authority granted to the Secretary of Transportation under title I of the Bill, he responded as follows:

> We think that the highway safety problem is a matter of great public concern, and national interest. We don't think that the objectives that have been defined can be accomplished on a piecemeal basis or by leaving the authority untouched that is now vested in the States and municipalities.

Traffic Safety: Hearings on H.R. 13228 Before the House Comm. on Interstate and Foreign Commerce, 89th Cong., 2d Sess., pt. 1, at 146 (1966) (hereafter "*House Hearings*") (statement of Hon. John T. Connor, Secretary of Commerce).

Second, uniform national standards were necessary because multiple and inconsistent state standards would "creat[e] chaos in the automotive industry." *House Hearings*, pt. 1, at 606 (statement of Hon. William D. Hathaway, United States Representative from Maine). As Senator Magnuson stated in the Senate debate on the Safety Act:

> The traffic safety legislation that I have sent the Congress will . . . establish a program of strict national standards for automobiles. I cannot stress too strongly the need for these standards.
>
> The only alternative is unthinkable—50 standards for 50 different States. I believe that this would be chaotic.

112 Cong. Rec. 14,254 (1966) (statement of Sen. Magnuson). Senator Ribicoff reiterated this theme in testimony before the House Committee on Interstate and Foreign Commerce, stating that "if there is any item in American life that we use in our society that has to have some national standards because of the very nature of the item, it is the automobile." *House Hearings*, pt. 1, at 574 (statement of Hon. Abraham Ribicoff, United States Senator from Connecticut).

Third, uniform national standards were mandated because the states were unable to develop appropriate safety standards:

> In simple language, we are forced to establish a Federal role in highway traffic safety because State and local authorities have been unable to do the whole job. . . . It's time that the ultimate authority of the Federal Government was exercised in the traffic safety field.

House Hearings, pt. 1, at 554, 559, 561 (statement of Hon. Abraham Ribicoff, United States Senator from Connecticut).

An issue that arose in the hearings on the Safety Act was whether the Act's preemption provision was intended to occupy the field and preclude all state laws relating to vehicle and traffic safety. The sponsors made it clear that preemption would apply only where the Federal Government chose to act. *See, e.g., Traffic Safety: Hearing on S. 3005 Before the Senate Comm. on Commerce*, 89th Cong., 2d Sess. 65-66 (1966).

Congress made it equally clear that the Safety Act did not also establish compliance with federal safety standards as an affirmative defense in common law actions. It did so through section 108(c) of the Safety Act (now 49 U.S.C. § 30103(e)), which stated: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law."

The text and structure of the congressional reports on the Safety Act, and the discussion of section 108(c) in the floor debates, shed further light on the narrow role of section 108(c). First, section 108(c) is not included in section 103(d), the Safety Act's preemption provision,

but instead was located five sections later. Second, while the title of the preemption provision, section 103(d), was "Supremacy of federal standards," the title of section 108(c) was "Continuation of common law liability" and made no reference to preemption or federal supremacy. Third, the sections entitled "Preemption" in the congressional reports make no mention of section 108(c), and discuss only section 103(d). *See* H.R. No. 1919 at 16, *reprinted in* 1966 U.S.C.C.A.N. at 2732-33; H.R. Rep. No. 1776 at 17. The conference report does not even mention section 108(c), and the discussion of that section in the House report is contained under "Prohibited Acts and Exemptions." *See* H.R. Rep. No. 1776 at 22. Moreover, the discussions of sections 108(c) in the floor debates concerned evidentiary considerations, not preemption. *See, e.g.*, 112 Cong. Rec. 21,490 (1966); *id.* at 21,487.

SUMMARY OF THE ARGUMENT

The case before this Court demonstrates that the concerns that led Congress to preempt state standards inconsistent with federal safety standards would remain if section 108(c) were read, as the court of appeals read it, to preclude any application of either express preemption under section 103(d) or the doctrine of implied conflict preemption under any circumstances.

Section 103(d) of the Safety Act expressly preempts any state safety standard that is not identical to an applicable Federal Motor Vehicle Safety Standard. The court of appeals erred by refusing to find state common law safety standards expressly preempted because section 103(d) does not specifically refer to "common law claims." The notion that common law claims cannot be expressly preempted unless the preemption provision explicitly refers to "common law" is inconsistent with this Court's decision in *Cipollone v. Liggett Group, Inc.*, —— U.S. ——, 112 S. Ct. 2608 (1992), and with numerous decisions by this Court interpreting the phrases "state standard" and "state safety standard" to include state common law.

The court of appeals also erred in treating section 108(c) of the Safety Act, the Act's no-compliance defense clause, as a preemption provision. It is not. The language and structure of the Safety Act, its legislative history, and the method chosen by Congress to achieve the purpose of the Safety Act, demonstrate that section 108(c) was only intended to negate the affirmative defense of compliance with governmental standards and is not, and was not intended to be, a preemption provision or a general saving clause. Moreover, if section 108(c) is construed as a saving clause, an unbroken line of decisions by the Court holds that general saving clauses preclude only field preemption.

Finally, the court of appeals erred in holding that implied preemption analysis cannot be considered when a statute contains an express preemption provision. That construction is inconsistent with this Court's recent decisions in *Cipollone* and *CSX Transportation, Inc. v. Easterwood*, —— U.S. ——, 113 S. Ct. 1732 (1993).

ARGUMENT

THE SAFETY ACT PREEMPTS STATE COMMON LAW STANDARDS THAT CONFLICT WITH AN ON-POINT FEDERAL MOTOR VEHICLE SAFETY STANDARD

The Supremacy Clause requires that all conflicts between federal and state law be resolved in favor of the federal law. U.S. Const. art. VI, cl. 2. As this Court repeatedly has held, federal supremacy prohibits the enforcement of *any* state law that conflicts with the exercise of federal power. *E.g., Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982).

Preemption of state law can arise from federal regulations or from federal statutes. *See, e.g., Louisiana Pub. Serv. Comm'n v. F.C.C.*, 476 U.S. 355, 368-69 (1986).

Moreover, the imposition of damages under state tort law repeatedly has been held to be a form of state regulation subject to preemption:

> [R]egulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy. Even the States' salutary effort to redress private wrongs or grant compensation for past harm cannot be exerted to regulate activities that are potentially subject to the exclusive federal regulatory scheme.

Cipollone, 112 S. Ct. at 2620 (quoting *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 236, 247 (1959)). *Accord International Paper Co. v. Ouellette*, 479 U.S. 481, 495 (1987); *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 327 (1981).

Federal preemption can occur in any of three ways. First, Congress may expressly state an intent to preempt state law. *E.g., Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983). Second, Congress may otherwise indicate an intent to occupy an entire field of regulation, in which case the states still must leave all regulatory authority in that area to the Federal Government. *E.g., de la Cuesta*, 458 U.S. at 158. Third, a state law that conflicts with a federal statute or regulation is to that extent impliedly preempted, either when it would be impossible to comply with both the federal and state laws or when the state law stands " 'as an obstacle to the accomplishment of the full purposes and objectives of Congress.' " *Lawrence County v. Lead-Deadwood Sch. Dist.*, 469 U.S. 256, 260 (1985) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)). Even if a state law is intended to further the federal law's primary substantive goal, the state law is preempted if it conflicts with the methods chosen by the Federal Government to achieve that goal:

> [I]t is not enough to say that the ultimate goal of both federal and state law is [the same]. A state law also is preempted if it interferes with the *methods* by which the federal statute was designed to reach this goal.

Ouellette, 479 U.S. at 494 (emphasis added).

In this case, the court of appeals erred both in its articulation of these preemption principles and in its interpretation of the Safety Act. A proper application of the preemption principles established by this Court shows that the state common law standard asserted by Respondents is expressly preempted because of the existence of Federal Motor Vehicle Safety Standard 121, which the Ninth Circuit has recognized as a design standard, *see Paccar, Inc. v. National Highway Traffic Safety Admin.*, 573 F.2d 632, 639 n.26 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978), and that the decision below should be reversed.

I. THE SAFETY ACT EXPRESSLY PREEMPTS STATE COMMON LAW STANDARDS THAT CONFLICT WITH AN ON-POINT FEDERAL MOTOR VEHICLE SAFETY STANDARD

Section 103(d) is clear and unambiguous. It provides that when the Secretary of Transportation has chosen to promulgate a safety standard governing a particular aspect of motor vehicle performance, *any* state safety standard applicable to the same aspect of performance or item of equipment is preempted unless it falls within one of two statutory exceptions: when the state standard is "identical to the Federal standard," or when the state standard applies only to "vehicles procured for that government's own use . . . ."

Thus, the analysis for determining express preemption under the Safety Act is limited to three questions: First, is there a federal safety standard governing the aspect of performance or item of equipment at issue in effect? Second, is the state seeking to establish or maintain a state standard applicable to the same aspect of perform-

ance or item of equipment of such vehicle? Third, does the state standard fall outside the two statutory exceptions provided in section 103(d)? If the answers are all affirmative, the state standard is preempted.

Here, the court of appeals did not undertake the required analysis. Instead, it first observed that in *Taylor v. General Motors Corp.*, 875 F.2d 816 (11th Cir. 1989), *cert. denied*, 494 U.S. 1065 (1990), it had held that common law claims cannot be expressly preempted by section 103(d), and it then stated that *Taylor*'s analysis of express preemption was "unchanged by" *Cipollone v. Liggett Group, Inc.*, —— U.S. ——, 112 S. Ct. 2608 (1992). *Myrick v. Freuhauf Corp.*, 13 F.3d 1516, 1521 (11th Cir. 1994).

In truth, however, the express preemption analysis used in *Taylor* was erroneous, and *Cipollone* made this clear. This Court in *Cipollone* squarely rejected *Taylor*'s holding that a preemption provision cannot expressly preempt any common law claim unless the preemption provision explicitly refers to the "common law."

The preemption provisions at issue in *Cipollone* were in the Federal Cigarette Labeling and Advertising Act ("the 1965 Act") and the Public Health Cigarette Smoking Act of 1969 ("the 1969 Act"). The preemption provision of interest here is that of the 1969 Act, which stated:

> No requirement or prohibition based on smoking and health shall be imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this Act.

15 U.S.C. § 1334(b), as amended.

The preemption provision of the 1969 Act made absolutely no mention of "common law claims" or "common law" of any other sort, but instead contained only the phrase "no requirement or prohibition." Nonetheless, this Court found that the preemption provision expressly pre-

empted a variety of common law actions, as well as regulations and statutes.

In explaining why the 1965 Act, unlike the 1969 Act, did not preempt common law actions, the Court emphasized that the 1965 Act expressly stated that its purpose was only to prevent nonuniform "regulations":

> This reading comports with the 1965 Act's statement of purpose, which expressed an intent to avoid "diverse, nonuniform, and confusing labeling and advertising *regulations* with respect to any relationship between smoking and health." . . . . [T]he term "regulation" most naturally refers to positive enactments by the bodies [of legislatures and agencies], not to common law damage actions.

Cipollone, 112 S. Ct. at 2619 (emphasis in original). The Court then observed that, in contrast, the 1969 Act's preemption provision was *not* expressly limited to "regulations," but instead addressed state "requirements and prohibitions," and therefore preempted common law actions as well as regulations:

> Compared to its predecessor in the 1965 Act, the plain language of the pre-emption provision in the 1969 Act is much broader. First, the later Act bars not simply "statements" but rather "requirement[s] or prohibition[s] . . . imposed under State law."

Id. The Court then further explained:

> The phrase "[n]o requirement or prohibition" sweeps broadly and suggests no distinction between positive enactments and common law; to the contrary, those words easily encompass obligations that take the form of common law rules. As we noted in another context, "[state] regulation can be as effectively exerted through an award of damages as through some form of preventive relief. The obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy."

Id. at 2620 (quoting *Garmon*, 359 U.S. at 247).

The Court's preemption analysis in *Cipollone* is equally applicable here. The word "regulation" appears nowhere

in the Safety Act's preemption provision or statement of purpose. Thus, there is no basis for reading the preemption provision's use of the all-encompassing term "any safety standard" to mean only "any *regulatory* safety standard."

Also, like the 1969 Act's phrase "[n]o requirement or prohibition," the Safety Act's phrase "any safety standard" is one that "sweeps broadly and suggests no distinction between positive enactments and common law" and "easily encompass[es] obligations that take the form of common law rules." And it is as true here as it was in *Cipollone* that the intent of the preemption provision would be thwarted if the provision were held inapplicable to common law standards, because "[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy."

There can be no doubt that common law rules are state standards. For decades this Court has explicitly referred to common law rules as "state safety standards" or "state standards." *See, e.g., Asahi Metal Indus. Co. v. Superior Court,* 480 U.S. 102, 114-15 (1987) (referring to "state safety standards" set by California products liability common law); *Ouellette,* 479 U.S. at 496 n.17 (recognizing the "possibility that [the defendant] will have to meet a number of different standards" if sued under different states' common law); *Silkwood,* 464 U.S. at 256 (referring to "imposition of a state standard in a damages action"); *Kermarec v. Compagnie Generale Transatlantique,* 358 U.S. 625, 630-31 (1959) (referring to "standard of care" imposed by common law). Thus, the Court has repeatedly confirmed that the ordinary meaning of "state standards" includes judicial, not just regulatory or statutory, standards.

The Court in *Cipollone* also rejected the argument that state common law standards were not obligations or requirements "imposed under State law." 112 S. Ct. at 2620. The Court declared:

> At least since *Erie R. v. Tompkins,* 304 U.S. 64 (1938), we have recognized the phrase "state law" to include common law as well as statutes and regulations.

Id. Thus, section 103(d)'s prohibition of any action to establish a state standard conflicting with a directly applicable federal safety standard includes actions by courts, as well as actions by legislatures and regulatory agencies.

In addition, in a case decided the year after *Cipollone*, this Court once again held that an express preemption provision in a federal statute preempted certain common law tort claims even though the preemption provision made no reference to "common law claims" or "common law actions" or "common law" in any other context. *See CSX Transp., Inc. v. Easterwood,* —— U.S. ——, 113 S. Ct. 1732 (1993) (interpreting preemption provision of Federal Railroad Safety Act of 1970, 45 U.S.C. §434).[3]

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[3] Although the National Traffic and Motor Vehicle Safety Act defines the phrase "Motor vehicle safety standards" as "a minimum standard for motor vehicle performance, or motor vehicle equipment performance," the word "minimum" does not mean that the standards established under the Safety Act are only minimal. In fact, the National Highway Traffic Safety Administration has explicitly rejected such an interpretation of the word "minimum":

> The word "minimum" in the standard definition of motor vehicle safety standards . . . does *not* refer to the substantive content of the standards but rather to their legal status—that the product covered must not fall short of them.

41 Fed. Reg. 2392 (Jan. 16, 1976) (emphasis added). The Safety Administration could not have ruled otherwise, because the Safety Act requires every safety standard to protect the public against "unreasonable risk of death or injury" and to "meet the need for motor vehicle safety." 15 U.S.C. § 1391(1).

In fact, the Safety Administration has specifically stated that its mission is to establish "optimum," not minimal, standards:

> This office has the responsibility for formulating and developing Federal Motor Vehicle Safety Standards *which establish requirements for optimum crash and postcrash protection* of vehicle occupants, pedestrians and cyclists.

National Highway Traffic Safety Administration Motor Vehicle Programs, *Program Plan for Motor Vehicle Safety Standards* at 3 (October 1971) (emphasis added).

This Court likewise has recognized that a federal statute's reference to standards promulgated under the statute as "minimum

Finally, in *Cippollone* this Court observed that Congress had expressly stated what was to be preempted, that "the other provisions of the 1965 and 1969 Acts offer no cause to look beyond [the express preemption provisions]," and that "the familiar principle" of *expressio unius est exclusio alterius* therefore made it inappropriate to preempt anything other than what Congress had chosen to specify. 112 S. Ct. at 2618.

The principle of *expressio unius est exclusio alterius* is equally applicable to the Safety Act's preemption provision. When the Secretary of Transportation has chosen to promulgate a safety standard governing a particular aspect of motor vehicle performance, the first sentence of section 103(d) broadly prohibits every state from establishing "*any* safety standard applicable to the same aspect of performance" unless the state standard is "identical to the Federal standard." The second and third sentences of section 103(d) are saving clauses that specify the *only* exemptions from that express preemption. The second sentence allows the states to "enforc[e] any safety standard which is identical to a Federal safety standard." The third sentence allows "the government of any State or political subdivision thereof" to establish, *for vehicles procured for that government's own use*, standards that "impose[] a higher standard of performance than that required to comply with the otherwise applicable Federal standard." This is the full extent of the preemption provision.

The two saving clauses in the preemption provision show that Congress well knew how to carve out exceptions to that provision. Because no other exception appears within the preemption provision, the doctrine of *expressio unius est exclusio alterius* dictates that no other should be implied. *See also United States v. Rutherford*, 442 U.S. 544, 552 (1979) ("Exceptions to clearly delineated statutes will be implied only where essential to prevent 'absurd results' or consequences obviously at variance with the policy of the enactment as a whole.").

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standards" does not mean that the states are free to impose more stringent standards. *See Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 168 n.19 (1978).

II. SECTION 108(c) OF THE SAFETY ACT DOES NOT PRESERVE STATE COMMON LAW SAFETY STANDARDS THAT CONFLICT WITH AN ESTABLISHED FEDERAL MOTOR VEHICLE SAFETY STANDARD

In addition to the preemption provision, the Safety Act contains a later provision, section 108(c), that states: "Compliance with any Federal motor vehicle safety standard issued under this subchapter does not exempt any person from any liability under common law." 15 U.S.C. § 1397(c). In *Taylor* the Eleventh Circuit incorrectly ruled that common-law claims could not be expressly preempted because the language of section 108(c) appeared to conflict with the language of the Act's preemption provision, section 103(d). As shown below, in determining congressional preemptive intent, the *Taylor* court should have recognized that section 108(c) only negates the affirmative defense of compliance with government standards, not preemption, and that, at most, section 108(c) negates field preemption, not preemption where state law conflicts with an on-point federal standard.

The court of appeals below went several wrong steps further. First, the court mischaracterized section 108(c) as a preemption provision. *Myrick*, 13 F.3d at 1526. As shown below, however, the language and structure of the Safety Act, its legislative history, and the method chosen by Congress to achieve the purpose of the Safety Act, demonstrate that section 108(c) is not, and was not intended to be, a preemption provision.

Second, after erroneously elevating section 108(c) to the status of a preemption provision, the court of appeals compounded that error by ignoring the Safety Act's true preemption provision completely, and instead ruled that section 108(c) alone constituted a "reliable indicium" of congressional intent not to preempt common law claims.

Myrick, 13 F.3d at 1525-26. If section 108(c) is to be considered in conjunction with the Safety Act's true pre-emption provision, section 103(d), that consideration precludes a finding that section 108(c) creates a "reliable indicium" of congressional intent.

A. The Language and Structure of the Safety Act Demonstrate That Section 108(c) Is Not, and Was Not Intended to Be, a Preemption Provision

The court of appeals below mischaracterized section 108(c) as a preemption provision, and stated:

> We are concerned with what Congress expressly stated about pre-emption, and in the Safety Act, Congress put its statements about pre-emption in two statutory provisions, one of which we refer to as a pre-emption clause and the other one of which we call a savings clause. Our terminology notwithstanding, both of the clauses are pre-emption provisions in the material sense of the word, because both clauses explicitly deal with the subject of what is and is not pre-empted. Our rejection of this argument finds support in the *Easterwood* decision, because that case also involved not only a pre-emption clause but also a savings clause.

Myrick, 13 F.3d at 1526. The court of appeals was wrong in stating that section 108(c) "explicitly deal[s] with the subject of what is and what is not pre-empted" and in stating that the *Easterwood* decision supported the court's conclusions. The truth is, section 108(c) does *not* "explicitly deal with the subject of what is and is not is pre-empted," and *Easterwood* plainly *undermines* the court of appeals' opinion.

First, the true preemption provision, section 103(d), is explicitly entitled "Supremacy of federal standards," but section 108(c) has a title that makes no reference, explicit or otherwise, to the Supremacy Clause or to preemption. Section 108(c) is simply entitled "Continuation of common law liability." *See I.N.S. v. National Ctr. for Immigrants' Rights, Inc.*, —— U.S. ——, ——, 112 S. Ct. 551, 556 (1991) (title of a statute or section can aid in resolving ambiguity in legislation's text).

Second, as the court of appeals correctly recognized in *Wood v. General Motors Corp.*, 865 F.2d 395, 401 n.8, 417-18 (1st Cir. 1988), *cert. denied*, 494 U.S. 1065 (1990), the language of section 108(c) definitively is *not* the language commonly employed by Congress in saving clauses intended to restrict the scope of preemption. Instead, the language of section 108(c) is language that refers to and negates compliance with a government standard as an affirmative common law defense. There is no explicit reference to preemption or to the limits of federal supremacy.

The narrow language of section 108(c), which refers to "[c]ompliance with any Federal motor vehicle safety standard," differs dramatically from the encompassing saving-clause language that Congress used both in the preemption provision of the Safety Act itself and in numerous other statutes when it intended to restrict the scope of preemption. Thus, for example, in the true express preemption provision of the Safety Act, section 103(d), Congress explicitly incorporated two saving-clause exceptions to the preemptive first sentence of that provision. Each of the two saving-clause sentences begins with the clear, unambiguous, and traditional anti-preemption saving language, "Nothing in this section shall be construed . . . ." The two savings clauses in the preemption provision state:

> *Nothing in this section shall be construed* as preventing any State from enforcing any safety standard which is identical to a Federal safety standard. *Nothing in this section shall be construed* to prevent the Federal Government or the government of any State or political subdivision thereof from establishing a safety requirement applicable to motor vehicles or motor vehicle equipment procured for its own use. If such requirement imposes a higher standard of

performance then that required to comply with the otherwise applicable Federal standard.

(Emphasis added).

The saving clauses in virtually every other case decided by this Court in this century, both before and after *Cipollone*, have used similar encompassing language, *not* the narrow, affirmative-defense-oriented "compliance with" language of section 108(c).[4]

[4] *See e.g., John Hancock Mut. Life Ins. Co. v. Harris Trust & Sav. Bank*, —— U.S. ——, 114 S. Ct. 517, 525 (1993) (interpreting saving clause of Employee Retirement Income Security Act, 29 U.S.C. § 1144(b)(2)(A), which states that the statute "shall [not] be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities"); *Morales v. Trans World Airlines, Inc.*, —— U.S. ——, 112 S. Ct. 2031, 2034 (1992) (interpreting saving clause of Federal Aviation Act of 1958, 49 U.S.C. § 1506, which states, "Nothing . . . in this chapter shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this chapter are in addition to such remedies."). *Cipollone*, —— U.S. ——, 112 S. Ct. at 2618 (referring to saving clause of Comprehensive Smokeless Tobacco Health Education Act of 1986, 15 U.S.C. § 4406(c), which states, "Nothing in this Act shall relieve any person from liability, under common law or under State statutory law, to any other person."); *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 281 (1987) (interpreting saving clauses of 1964 Civil Rights Act, 42 U.S.C. §§ 2000e-7 and 2000h-4; the first of these provides, "Nothing in this title shall be deemed to exempt or relieve any person from any liability . . . provided by any present or future law of any State . . . ."; the second states, "Nor shall any provision of this Act be construed as invalidating any provision of State law"); *Malone v. White Motor Corp.*, 435 U.S. 497, 505 (1978) (interpreting saving clause of 1958 Disclosure Act, 29 U.S.C. § 301, which states, "The provisions of this Act . . . shall not be held to exempt or relieve any person from any liability . . . provided by any present or future law of . . . any State . . . ."); *Offshore Logistics, Inc. v. Tallentire*, 477 U.S. 207, 210 (1986) (interpreting saving clause of Death on the High Seas Act, 46 U.S.C. § 767, which states, "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this Chapter."). *See also Gade v. National Solid Wastes Management Ass'n*, —— U.S. ——, 112 S. Ct. 2374, 2382, 2384 (1992) (29 U.S.C. §§ 653(b)(4) and 667(a), the saving clauses in the Occupational Health and Safety Act); *California v. F.E.R.C.*, 495 U.S. 490, 497 (1990) (16 U.S.C. § 821, the saving clause in the Conservation, Regulation of Power, and Water Rights Act); *Mansell v. Mansell*, 490 U.S. 581, 600 (1989) (10 U.S.C. § 1408(e)(6), the saving clause in the Uniformed Services Former Spouses' Protection Act); *Ouellette*, 479 U.S. 481, 485, 493 (1987) (33 U.S.C. §§ 1365(e), 1370, the saving clauses in Navigation and Navigable Waters Act, Pollution Prevention Act); *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 733 (1985) (29 U.S.C. § 523(a), the saving clause in National Labor Relations Act); *Middlesex County Sewerage Auth. v. National Sea Clammers Ass'n*, 453 U.S. 1, 7 n.11, 14-15, 29 (1981) (38 U.S.C. § 1415(g)(5), the saving clauses in Navigation and Navigable Waters Act, Ocean Dumping Act); *Head v. New Mexico Bd. of Examiners in Optometry*, 874 U.S. 424, 443-44 (1963) (47 U.S.C. § 414, the saving clause in Wire or Radio Communication, Administration Provisions Act); *Northwest Airlines, Inc. v. County of Kent, Mich.*, —— U.S. ——, 114 S. Ct. 855, 862 (1994) (49 U.S.C. § 1513(b), the saving clause in Federal Aviation Program Act); *Hewitt-Robins, Inc. v. Eastern Freight-Ways, Inc.*, 371 U.S. 84, 87 (1962) (49 U.S.C. § 316, the saving clause in Motor Carriers, Rates, Fares and Charges Act, repealed Pub. L. 95-473, § 4(b), Oct. 17, 1978; Pub. L. 97-449, § 7(b), Jan. 12, 1983, 96 Stat. 2444); *Jones v. Rath Packing Co.*, 430 U.S. 519, 534, 537 (1977) (15 U.S.C. § 1460, the saving clause in Fair Packing and Labeling Program Act); *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 328 (1981) (49 U.S.C. § 22, the saving clause in Interstate Commerce Act).

This undeniably stark difference between the affirmative-defense "compliance with" language of section 108(c) and the preemption-addressing saving language used in section 103(d) and in numerous other statutes cannot properly be ignored. As this Court has emphasized, "Normal principles of statutory construction require that we give effect to the subtleties of language that Congress chose to employ." *Offshore Logistics*, 477 U.S. at 222.

The court of appeals further erred in its express preemption analysis by ignoring one of the cardinal principles articulated in *Easterwood*, where this Court reaffirmed the established principle that, in interpreting an express preemption provision, "[e]vidence of pre-emptive purpose is sought in the text and structure of the statute at issue." *Easterwood*, 113 S. Ct. at 1737. The Court's emphasis

on the importance of examining statutory structure as well as statutory language was not new in *Easterwood*; rather, the Court had emphasized the interpretive importance of structure before that case and before *Cipollone*. *See, e.g., Gade v. National Solid Wastes Mgt. Ass'n*, —— U.S. ——, 112 S. Ct. 2374, 2383, 2390 (1992); *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 95 (1983).

Here, the structure of the Safety Act, like the language itself, shows that section 108(c) was never intended to be the sweeping exception to section 103(d) that the court erroneously found it to be. Section 108(c) appears five full sections after the true preemption provision—namely, the provision whose title explicitly refers to "Supremacy of federal standards." That structural fact alone should have given the court of appeals pause. But the court of appeals' interpretation is still further undermined by the additional structural fact that section 103(d) contains two, and only two, explicit saving clauses, each of which uses traditional saving clause language. This additional structural fact suggests that, if Congress had intended the substance of section 108(c) to constitute a third—and the most sweeping—exception to the preemption provision in the first sentence of section 103(d), Congress would have included the language of section 108(c) in its logical place, adjacent to the other two explicitly stated saving clauses in the statute labeled "Supremacy of federal standards." Inescapably, section 108(c) is not a true saving clause.

This Court also has emphasized the interpretive importance of the location of saving language relative to preemptive language. In *Easterwood* the Court stated, "The pre-emptive effect of these regulations is governed by § 434, which contains express saving and pre-emption clauses." *Easterwood*, 113 S. Ct. at 1736. The Court then emphasized that the preemption provision was "a provision that displays considerable solicitude for state law in that its express pre-emption clause is both prefaced and succeeded by express saving clauses." *Easterwood*, 113 S. Ct. at 1738. Here, in stark contrast, no such

solicitude for state law appears; the Safety Act's preemption provision, section 103(d), is *neither* prefaced *nor* succeeded by an express saving clause for common law actions. Indeed, the "[c]ompliance with" language relied on by the court of appeals appears fully five sections after the preemption provision.[5]

B. The Legislative History of the Safety Act Demonstrates That Section 108(c) Is Not, and Was Not Intended to Be, a Preemption Provision

The treatment of section 108(c) in the House and Conference reports, and in the floor debates, further demonstrates that section 108(c) is not, and was not intended to be, a preemption provision.[6] Both the House and conference reports contain sections entitled "Preemption." *See* H.R. Rep. No. 1919, 89th Cong., 2d Sess. 16 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2731, 2732-33; H.R. Rep. No. 1776, 89th Cong., 2d Sess. 17 (1966). Neither of those sections, however, discusses or even mentions section 108(c). They discuss only section 103(d), the Safety Act's true preemption provision. The House report discusses section 108(c) seven pages later under the heading "Prohibited Acts and Exemptions," and the conference report does not even mention section 108(c).

If Congress had intended section 108(c) to be a preemption provision or a true saving clause, the House

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[5] That section 108(c) is not, and was not intended to be, a preemption provision or a true saving clause is further demonstrated by the 1994 recodification of the Safety Act. Section 103(d), the Safety Act's true preemption provision, is recodified at 49 U.S.C. section 30103(b), which is entitled "Preemption." Section 108(c), however, is not included in that subsection entitled "Preemption," but is three subsections away, in a subsection entitled "Common law liability." *See* 49 U.S.C. section 30103(e). If Congress had intended or recognized section 108(c) to be a preemption provision, Congress would have recodified section 108(c) under the subsection explicitly entitled "Preemption."

[6] Because section 108(c) was added to the Senate bill after the House and Senate conference, the Senate report contains no discussion of the savings clause.

and conference reports would have discussed that section under the preemption sections—as the reports did for the two exceptions to preemption of state standards contained in section 103(d)—rather than seven pages later under an entirely different heading. Further, if Congress had intended section 108(c) to be a sweeping new exception to the preemption provision, Congress would at least have mentioned section 108(c) in the conference report.

The fact that Congress did not view section 108(c) as a preemption provision is further demonstrated by Senator Magnuson's description of it to the Senate after the House-Senate conference:

> The Senate conferees accepted the House provision that compliance with Federal standards does not exempt any person from common law liability. This provision makes explicit, in the bill, a principle developed in the Senate report. This provision does not prevent any person from introducing in a lawsuit evidence of compliance or noncompliance with Federal standards. No court rules of evidence are intended to be altered by this provision.

112 Cong. Rec. 21,487 (1966). The "principle developed in the Senate report" to which Senator Magnuson referred is that Federal safety standards "*need not* be interpreted as restricting State common law standards of care," and that "[c]ompliance with such standards would thus *not necessarily* shield any person from product liability at common law." S. Rep. No. 1301, 89th Cong., 2d Sess. 12 (1966), *reprinted in* 1966 U.S.C.C.A.N. 2709, 2720 (emphasis added). In other words, the addition of section 108(c) was merely intended to clarify that the Safety Act did not create an affirmative defense of compliance with government standards or, at most, that the Safety Act's preemption provision does not occupy the field, and thus does not "*necessarily*" protect a common law defendant. If section 108(c) *always* prevented preemption of *any* common law claim, the words "not necessarily" and "need not" would be not merely

superfluous, but internally inconsistent. If on the other hand, section 108(c) precludes only field preemption, or negates mere compliance with existing government standards as a complete defense at trial, the quoted legislative history is sensible and precise.

C. Even if Viewed as a Saving Clause, Section 108(c) Precludes Only Field Preemption, and Does Not Preclude Preemption Where There Is a Conflict Between On-Point Federal Law and the Asserted State Law

We have shown that the Safety Act's express preemption provision is section 103(d) and that the court of appeals erred in calling section 108(c) a preemption provision and a saving clause. But even if section 108(c) were to be viewed as a saving clause, the court of appeals still would have to be reversed because of that court's failure to follow this Court's decisions, from *Texas & Pacific Railway v. Abilene Cotton Oil Co.*, 204 U.S. 426 (1907) to *International Paper Co. v. Ouellette*, 479 U.S. 481, 496 (1987), holding that general saving clauses preclude only field preemption, not preemption based on a conflict between state and federal law.

Courts must assume that Congress is aware of existing law when it passes legislation. *Miles v. Apex Marine Corp.*, 498 U.S. 19, 31 (1990). Accordingly, it must be assumed that, when Congress enacted the Safety Act, it knew that in the previous half-century this Court had consistently ruled that general saving clauses cannot be interpreted to authorize state common law causes of action that conflict with federal regulatory policies. Rather, such saving clauses are included only because, without them,

> "it might have been claimed that, Congress having entered the field, the whole subject of liability . . . had been withdrawn from the jurisdiction of the state courts," so [the savings clause] was added to make plain that the Act "was not intended to deprive the state courts of their general and concurrent jurisdiction."

Kalo Brick, 450 U.S. at 328 (quoting *Pennsylvania R.R. v. Puritan Coal Mining Co.*, 237 U.S. 121 (1915)).

In *Abilene Cotton*, for example, the Court held that the Interstate Commerce Act precluded a common law action for damages for unjust and discriminatory rates, notwithstanding the Act's broad saving clause, which stated:

> Nothing in this act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this act are in addition to such remedies.

Recognizing the tension between the saving language and the broader purposes of the federal regulatory scheme, the Court held that the saving clause "cannot in reason be construed as continuing . . . a common law right" inconsistent with the underlying federal aims. 204 U.S. at 446.

Further, in *Pennsylvania Railroad v. Puritan Coal Mining Co.*, 237 U.S. 121, 129-30 (1915), the Court held that a general saving clause did not prevent preemption, but instead served only to preserve rights under state law that were consistent with the purposes of the federal statute. *Accord Ouellette*, 479 U.S. at 492-94; *Kalo Brick*, 450 U.S. at 331; *T.I.M.E., Inc. v. United States*, 359 U.S. 464, 473-74 (1959).

In *International Paper Co. v. Ouellette*, this Court reconfirmed that a general saving clause cannot preserve an otherwise preempted claim. The Court there held a state common-law tort action to be preempted by federal law despite the existence of two saving clauses in the relevant federal statute. The primary basis for the preemption holding was the Court's observation that such common law suits would destroy uniformity, allow states to "do indirectly what they could not do directly," and "exacerbate the vagueness and resulting uncertainty" that had existed. 479 U.S. at 495-96. The Court concluded:

> It would be extraordinary for Congress, after devising an elaborate permit system that sets clear standards, to tolerate common-law suits that have the potential to undermine this regulatory structure.

Id. at 497.

The same holds true here. The Safety Act was intended to achieve a uniform, national approach to vehicle safety. It would be "extraordinary for Congress . . . to tolerate common-law suits" that would "undermine this regulatory structure." Given this Court's repeated holdings that saving clauses only preclude field preemption, it is difficult to understand how the court of appeals, had it considered these precedents, could have given Section 108(c) such sweeping scope.

In sum, the language and structure of the Safety Act, its legislative history, the method chosen for achieving the statutory purpose, and almost a century's worth of decisions by this Court demonstrate that section 108(c) does not, and was not intended to, preclude preemption of common law standards that conflict with on-point federal safety standards. Had the court of appeals considered all of this, it would have found that the Safety Act expressly preempts claims that attempt to establish a state common law standard that conflicts with an existing federal standard such as Federal Motor Vehicle Safety Standard 121, which grants an *option* to install a certain design safety feature.[7] The Safety Administration's implementation of an optional braking design standard stemmed from the federal interest in promoting vehicle safety.[8] To permit plaintiffs to seek damages

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[7] The district court in *Myrick* explained that the Safety Administration's amendments to Safety Standard 121 following the Ninth Circuit's decision in *Paccar, Inc. v. National Highway Traffic Safety Admin.*, 573 F.2d 632 (9th Cir.), *cert. denied*, 439 U.S. 862 (1978), were "intended to preserve the option of *not* installing anti-lock braking devices until such devices had been improved and subjected to further testing." *Myrick v. Fruehauf Corp.*, 795 F. Supp. 1139 (N.D. Ga. 1992). Respondents' claims, however, seek to abrogate that option.

[8] The Ninth Circuit concluded that "many vehicles equipped with antilocks were potentially more dangerous in performance than

under state law from a manufacturer that exercised its option not to use a device whose reliability has been questioned under federal law would conflict with the federal purpose.

III. THE COURT OF APPEALS FURTHER ERRED IN HOLDING THAT IMPLIED PREEMPTION ANALYSIS WAS AUTOMATICALLY PRECLUDED BECAUSE THE SAFETY ACT CONTAINS AN EXPRESS PREEMPTION PROVISION

We have shown that the court of appeals erred in its interpretation of the express preemption principles articulated by this Court in *Cipollone*. The court of appeals' treatment of implied preemption was equally flawed. The court held that, because the Safety Act contains an express preemption provision, *Cipollone* precludes any application of implied preemption, even if the state standard in question conflicts with the federal policies and purposes underlying the Safety Act and its implementing regulations. The court's conclusion that *Cipollone* thus tacitly overturned decades of implied preemption cases, without even bothering to mention them is contrary to this Court's fidelity to *stare decisis* and is based on a completely erroneous view of *Cipollone*'s language.

The language on which the court of appeals relied for its view that *Cipollone* dramatically changed implied-preemption law is as follows:

> Where a federal statute contains an express pre-emption clause, and that clause "provides a 'reliable indicium of congressional intent with respect to state authority,'" a court should not consider implied theories of pre-emption.

Myrick, 13 F.3d at 1521, quoting *Cipollone*, 112 S. Ct. at 2618. Neither the language used nor the principle

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pre-Standard vehicles. *Paccar*, 573 F.2d at 643. Thus, the court-ordered suspension of the requirement was designed to further the safety goals of the Safety Act, by seeking to ensure that the mandate did not "produce a more dangerous highway environment than that which existed prior to governmental intervention." *Id.*

espoused was new, much less an engine for upheaval of the entire preemption firmament. Five years earlier, in *California Federal Savings & Loan Association v. Guerra*, 479 U.S. 272, 282 (1987), this Court stated:

> [T]here is no need to infer congressional intent to pre-empt state laws from the substantive provisions of Title VII; these two [preemption] sections provide a "reliable indicium of congressional intent with respect to state authority" to regulate employment practice.

Similarly, nine years before *Guerra* the Court stated:

> If the Pension Act is pre-empted here, the congressional intent to do so must be *implied* from the relevant provisions of the labor statutes. We have concluded, however, that such implication should not be made here and that a far more reliable indicium of congressional intent with respect to state authority to regulate pension plans is to be found in § 10 of the Disclosure Act.

Malone v. White Motor Corp., 435 U.S. 497, 505 (1978).

Not only did the court of appeals thus err in asserting that *Cipollone* had articulated a new preemption test, but the court then compounded its error by ignoring the very language it had quoted and by asserting that *Cipollone* established "that when there is an express preemption provision [in a federal statute], we should not consider implied preemption . . . ." *Myrick*, 13 F.3d at 1522. *Cipollone* established no such thing. Like *Guerra* and *Malone* before it, *Cipollone* merely said that a court must *first* look to the express preemption provision, and *if* that provision provides "a reliable indicium of Congressional intent," *then* there is no need to look elsewhere. *Cipollone*, 112 S. Ct. at 2618. In fact, in the unanimous decision in *Easterwood* the year after *Cipollone*, this Court reaffirmed that basic principle, stating:

> If the statute contains an express pre-emption clause, the task of statutory construction must *in the first instance* focus on the plain wording of the clause,

> which necessarily contains the best evidence of Congress' pre-emptive intent.

Easterwood, 113 S. Ct. at 1737 (emphasis added).

The court of appeals' distortion of *Cipollone*'s language is even more indefensible because it assumes that this Court in *Cipollone* established a new preemption rule that tacitly overruled all of the prior cases in which the Court had found implied preemption when an express preemption provision existed. *See, e.g., Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 139-40 (1990); *Jones v. Rath Packing Co.*, 430 U.S. 519, 540-43 (1977). The court of appeals thus also necessarily presumed that this Court had simply ignored its repeatedly articulated fidelity to *stare decisis*. *See, e.g., Lee v. Weisman*, —— U.S. ——, 112 S. Ct. 2649, 2655 (1992); *Allied-Signal, Inc. v. Director, Div. of Taxation*, —— U.S. ——, 112 S. Ct. 2251, 2261-62 (1992). Indeed, the court of appeals presumed that this Court ignored *stare decisis* without saying that it was doing so, much less why it was doing so, and chose to overrule decades of precedents without mentioning them or acknowledging the upheaval being wrought. Those presumptions are, quite simply, untenable.

When the court of appeals asked whether the Safety Act's preemption provision provided a "reliable indicium of Congressional intent," it also committed the same interpretive errors that infected its express preemption discussion. In particular, it treated section 108(c) as an express preemption provision and asked whether *it* provided a reliable indicium of Congress' intent. As already shown above, that characterization of section 108(c) is entirely unsupportable. The court of appeals thus turned the requisite *Cipollone* analysis on its head by seeking the reliable indicium of congressional intent with respect to preemption not in the actual preemption provision, but in a provision that the court illogically and unjustifiably chose to call a preemption provision.

The court of appeals also erred by assuming that the only alternative to the sweeping scope it gave to section

108(c) was an interpretation that would make section 108(c) redundant—namely an interpretation that would have section 108(c) preserve only common law actions based on allegations of defects in features not addressed by any federal safety standard. Because the preemption provision in section 103(d) applies only when there is an applicable federal safety standard, the court of appeals was able to observe that such an interpretation of section 108(c) would make it meaningless.

But that is a strawman argument. Section 108(c) can and should be given a nonredundant interpretation that is more consistent with its own language, more consistent with the language of section 103(d), and more consistent with this Court's preemption principles. Section 108(c) should be read to negate the affirmative defense of compliance with a safety standard, as its language plainly suggests. If it is to be read as a preemption-limiting provision, it should be read in the manner that this Court has always read general savings clauses—namely, as a negation of field preemption, not as a negation of conflict preemption. It was only by focusing on an indefensible alternative interpretation, and ignoring the sensible alternatives, that the court of appeals was able to make its own strained interpretation of section 108(c) seem preferable.

The error in the court of appeals' view that section 108(c) precludes *any* preemption, express or implied, of *any* common law claim is even more forcefully shown by applying that view to the Safety Administration's recent regulation governing warnings about airbag dangers. On September 2, 1993, the Safety Administration promulgated a regulation specifying detailed, exact warnings that must be placed on the sun visors of all new passenger cars beginning on September 1, 1994. 58 Fed. Reg. 46551, 46564 (Sept. 2, 1993). In the same regulation, the Safety Administration explicitly prohibited all manufacturers from including any other airbag warning language on the sun visors, explaining that the resulting plethora of language would impair the effectiveness of

the required warnings. *Id.* at 46554-55, 46564. Under the court of appeals' overexpansive view of section 108(c), plaintiffs throughout the nation could nevertheless sue manufacturers for compensatory and punitive damages for not including additional warnings about airbag dangers, even though the manufacturers could not include the additional warnings without violating federal law. As this Court stated in *Kalo Brick,* 450 U.S. at 321-22, 325-26, and in *Ouellette,* 479 U.S. at 493-97, it is simply inconceivable that Congress intended to permit the individual states so seriously to thwart federal policies and purposes through the common law.

CONCLUSION

For the foregoing reasons, the Court should reverse.

Respectfully submitted,

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APPENDIX

APPENDIX A

LIST OF PRODUCT LIABILITY ADVISORY COUNCIL CORPORATE MEMBERS

Aluminum Co. of America
American Automobile Manufacturers Ass'n
American Home Products Corp.
American Suzuki Motor Corp.
Amsted Industries Incorporated
Andersen Corporation
Anheuser-Busch Companies, Inc.
AT&T
Atlantic Richfield Co.

Baxter International
Beech Aircraft Corp.
Black & Decker Corp.
Bridgestone/Firestone, Inc.
Bristol-Meyers Squibb Co.
British Aerospace
Burroughs Wellcome Co.

Caterpillar, Inc.
Chrysler Corp.
Ciba-Geigy Corp.
Clark Material Handling Co.
Coca-Cola Co.

Dana Corporation
Deere & Co.

Eaton Corp.
Eli Lilly and Co.
Emerson Electric Co.
Estee Lauder Cos.
Exxon Corp.

Federal-Mogul Corp.
FMC Corp.
Ford Motor Co.
Freightliner Corp.

General Electric Co.
General Motors Corp.
General Tire, Inc.
Goodyear Tire & Rubber Co.
Great Dane Trailers, Inc.

Harnischfeger Industries
Hoechst Colanese Chemical Group, Inc.
Honda North America, Inc.
Hyundai Motor America

Ingersoll-Rand Co.
International Paper Co.
Isuzu Motors America, Inc.

Jervis B. Webb Co.
Johnson Controls, Inc.
Joy Technologies Inc.

Kawasaki Motors Corporation, U.S.A.
KIA Motors of America, Inc.
Kraft General Foods

Lake Aircraft, Inc.

Matushita Electric Corp. of America
Mazda (North America), Inc.
Melroe Co.
Mercedes-Benz of N. America Inc.
Merck & Company, Inc.
Michelin Tire Corp.
Miller Brewing Co.
Minnesota Mining and Manufacturing Co.
Mitsubishi Motor Sales of America, Inc.
Monsanto Co.

Navistar International Transportation Corp.
New United Motor Manufacturing, Inc.
Nissan North America, Inc.
O.F. Mossberg & Sons, Inc.
Otis Elevator Co.
PACCAR Inc.
PepsiCo
Pfizer Inc.
Philip Morris Companies, Inc.
Pirelli Armstrong Tire Co.
Playtex Products Inc.
Porsche Cars North America, Inc.
PPM Cranes, Inc.
Procter & Gamble Company
RJ Reynolds Tobacco Co.
Rockwell International Corp.
Schindler Elevator Corp.
Sears, Roebuck and Co.
Sherwood Division of Harsco Corp.
Snap-on Inc.
Sturm, Ruger and Co., Inc.
Subaru of America, Inc.
The Boeing Company
The Budd Co.
The Coleman Co., Inc.
The Dow Chemical Co.
The Gates Rubber Co.
The Raymond Corp.
The Toro Co.
TRW Inc.
Toyota Motor Sales, U.S.A., Inc.
U.S. Tobacco
Union Carbide Corporation
Unocal Corp.
Upjohn Co.
Volkswagen of America, Inc.
Volvo Cars of North America, Inc.
Vulcan Materials Co.
Web Service Company, Inc.
Whirlpool Corp.
White Consolidated Industries, Inc.
Yamaha Motor Corp., U.S.A.